

General Information Letter: Property owned by leasing company is not "qualified property" because the owner is not a retailer.

February 5, 1999

Dear:

This is in response to your letter dated January 28, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter (GIL) which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated as follows:

We represent a taxpayer that has formed as a limited liability company in the State of New Jersey and owns and operates a commercial retail rental facility in Illinois. The active business of the company is that of owning property and collecting rents therefrom. The issue put forth is whether or not this type of activity qualifies as "qualified property" for the investment credit of one-half of 1%. Our qualification would come under the provision extending the credit to activities included under Section 201(2)(D), property used in Illinois being a taxpayer who is primarily engaged in retailing. Although the company does not actively engage in retailing, the property which it owns is retail, and the question is whether or not the qualification extends to this configuration of ownership.

RULING

Section 201(e) of the Illinois Income Tax Act ("the IITA"; 35 ILCS 5/101 *et seq.*) allows a credit against the Personal Property Tax Replacement Income Tax for investment in "qualified property." Illinois Income Tax Regulations states that for property to be qualified under this section, the property must, among other things, "be used in Illinois by the taxpayer who is engaged primarily in ... retailing" (86 Ill. Adm. Code 100.2101(e)). As to this requirement, the Regulations go on to state:

A lessor of otherwise qualifying property, which property is used by the lessee in ... retailing, ... would not qualify for the credit because the property is not used "by the taxpayer".

Applying these provisions to the facts presented here, because the property has not been used "by the taxpayer who is engaged primarily in retailing," the property is not "qualified property" for purposes of the section 201(e) investment credit.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)

